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Attorneys for Defendant
D-LINK SYSTEMS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

3COM CORPORATION,)	CASE NO. C 05 00098 VRW
)	
Plaintiff,)	STIPULATED PROTECTIVE ORDER
)	REGARDING DISCLOSURE OF
v.)	<u>CONFIDENTIAL INFORMATION</u>
)	
D-LINK SYSTEMS, INC.)	
)	
Defendant.)	

WHEREAS, Plaintiff 3Com Corporation and Defendant D-Link Systems, Inc. believe that certain information that is or may be sought through discovery in this action constitutes trade secrets or other “confidential research, development, or commercial information” within the meaning of Fed. R. Civ. P. 26(c); and

1 WHEREAS, Plaintiff and Defendant believe that it would facilitate discovery to produce
2 such information under a protective order pursuant to Fed. R. Civ. P. 26(c);

3 IT IS HEREBY STIPULATED, subject to the approval of the Court, that:

4 1. Definitions:

5 (a) "Discovery Material" means any and all documents, testimony, deposition
6 transcripts, deposition exhibits, interrogatory responses, admissions, and any other information
7 produced or otherwise provided by a party or non-party to another party or non-party in
8 connection with discovery in this litigation.

9 (b) "Designating Party" means any person or entity, whether a party to this lawsuit
10 or not, who has designated documents or information as either "CONFIDENTIAL" or
11 "CONFIDENTIAL--ATTORNEYS' EYES ONLY" under this Order.

12 (c) "Producing Party" means any person or entity, whether a party to this lawsuit or
13 not, who has produced documents or provided information in this litigation or from whom
14 documents or information have been requested.

15 (d) "Receiving Party" means any party who has received documents or information
16 in this litigation.

17 (e) "CONFIDENTIAL" information means information that the Producing Party in
18 good faith believes to be "confidential research, development, or commercial information" within
19 the meaning of Fed. R. Civ. P. 26(c), including financial information, security measures,
20 nonpublic technical information, ongoing research and development projects, unpublished patent
21 applications and filewrappers, patent license agreements, or other non-public information.

22 (f) "CONFIDENTIAL--ATTORNEYS' EYES ONLY" information means
23 sensitive CONFIDENTIAL information that the Designating Party in good faith believes will
24 harm its competitive position if the information becomes known to a party other than the
25 Designating Party. The particular examples listed in sub-paragraph (e) above are not intended to
26 create any presumption as to whether a particular type of document should be designated
27 "Confidential-Attorneys Eyes Only" or "Confidential."
28

1 (g) “Confidential Discovery Material” means any Discovery Material that is
2 designated as “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’ EYES ONLY,” in
3 accordance with the procedures set forth below, including but not limited to:

4 (i) Information furnished pursuant to Federal Rule of Civil Procedure
5 26.

6 (ii) Information furnished or set forth in response to any discovery
7 request made under Fed. R. Civ. P. 31, 33, or 36, provided that, prior to disclosure to the
8 Receiving Party, the information or responses are plainly marked or otherwise identified by the
9 Designating Party on each page as “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’
10 EYES ONLY”.

11 (iii) Information set forth in documents made available for inspection by
12 the Producing Party voluntarily or under Fed. R. Civ. P. 33(d) or 34 and that are identified at the
13 time of inspection as may be containing or comprising “Confidential Discovery Material,” shall be
14 treated as CONFIDENTIAL – ATTORNEYS’ EYES ONLY” during the inspection. The party
15 producing information for inspection need not designate the information by stamping or labeling it
16 as “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” until copies are
17 delivered to the inspecting party in response to the inspecting party requesting copies of the
18 information. Making documents and things available for inspection shall not constitute a waiver of
19 any claim of confidentiality, attorney-client privilege, or work-product immunity.

20 (iv) Information set forth in any copies of documents produced to the
21 Receiving Party voluntarily or under Fed. R. Civ. P. 33(d) or 34, provided that, prior to delivery of
22 the copies to the Receiving Party, the copies are physically or digitally marked, as feasible, by the
23 Designating Party as “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’ EYES ONLY.”
24 Each page, unit, or thing should be individually marked with the appropriate designation, as
25 feasible.

26 (v) Information revealed by inspection of things or premises voluntarily
27 or under Fed. R. Civ. P. 34, provided that, prior to the inspection, the party permitting inspection
28 states in writing that its Confidential Discovery Material will be disclosed by the inspection and

1 specifies in writing those parts of the things or those areas of the premises in which its
2 “CONFIDENTIAL” or “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” information will be
3 revealed. Making things and premises available for inspection shall not constitute a waiver of any
4 claim of confidentiality, attorney-client privilege, or work-product immunity.

5 (vi) Information revealed during deposition upon oral examination under
6 Fed. R. Civ. P. 30 or pursuant to subpoena under Fed. R. Civ. P. 45, except that the information
7 revealed during any particular deposition shall cease to be Confidential Discovery Material ten
8 days after the deposition transcript becomes available, unless at the deposition or before the ten
9 day period has expired, the witness, his employer, or his counsel states on the record at the
10 deposition, or gives written notice before the ten day period expires, that “CONFIDENTIAL” or
11 “CONFIDENTIAL--ATTORNEYS’ EYES ONLY” information of the witness or his employer is
12 set forth in the transcript. In the case of non-party witnesses, either a party or the non-party
13 witness may designate information revealed as its “CONFIDENTIAL” or “CONFIDENTIAL--
14 ATTORNEYS’ EYES ONLY” information within ten days after the deposition transcript becomes
15 available.

16 (vii) Any summary, digest, analysis, or comment on any Confidential
17 Discovery Material identified in categories (i)-(v) that is not immune from discovery due to
18 attorney-client privilege or work product immunity.

19 (h) Confidential Discovery Material shall not include any information that:

20 (i) is or becomes publicly available without the Receiving Party's
21 breach of any obligation owed to the Designating Party;

22 (ii) is lawfully in the possession of a party receiving such information
23 without any confidentiality obligations at the time of disclosure; or

24 (iii) is lawfully disclosed by a third party that is not subject to any
25 confidentiality obligations at the time of disclosure.

1 2. Confidential Discovery Material designated “CONFIDENTIAL” may only
2 be disclosed to the persons falling within the categories specified in paragraphs 2(a), (b), (c), and
3 (d) below:

4 (a) the Court and Court personnel involved with this case under seal as
5 mandated by the Court's Local Rules;

6 (b) the parties' respective outside counsel of record in this action and also
7 outside counsel for Marvell Semiconductor, Inc. (“MSI”), including counsel’s legal support staff
8 and outside copying and graphics services as reasonably necessary to perform such services under
9 the supervision of outside counsel of record;

10 (c) outside stenographic court reporters and language translators (including
11 support staff as reasonably necessary); and

12 (d) the additional individuals listed in categories (i) through (vi) immediately
13 below, provided such additional individuals—except for those in category (iii) with respect to the
14 Confidential Discovery Materials identified in category (iii)—have read this Protective Order in
15 advance of disclosure and signed an Undertaking in the form attached as Exhibit A, which shall be
16 retained in the files of outside counsel with whom the additional individual is associated:

17 (i) up to three (3) officers, directors, or employees of each party, and up
18 to one (1) officer, director, or employee of Marvell Semiconductor, Inc. (“MSI”) to the extent
19 necessary to assist in the conduct of this litigation, and who are specifically designated by written
20 notice to the other party identifying each such person by name and position;

21 (ii) any person retained by a party or its counsel of record as an
22 independent consultant or testifying expert for purposes of this action who has no continuing
23 relationship, other than as an expert or consultant, with any of the parties hereto or their affiliates,
24 or any of their competitors, and retained in accordance with the provisions set forth in
25 paragraph 5 below;

26 (iii) a deponent or other witness who is named as an author or recipient
27 of, has previously seen the contents of, has at any time been authorized to see, or would normally
28

1 be expected to have seen or have access to the type of document or thing marked as Confidential
2 Discovery Material that is to be disclosed to them;

3 (iv) paralegals, stenographic and clerical employees, and translators
4 associated with the individuals enumerated in (a) and (d)(i) - (iii) above, but only as part of a
5 disclosure to said individuals in accordance with this Protective Order;

6 (v) any person retained by a party to supervise the destruction of
7 Confidential Discovery Material per paragraph 14 below under the supervision of a party's
8 outside counsel of record; and

9 (vi) such other individuals as the parties may agree to in writing or in a
10 transcribed record.

11 (e) Any disclosure of "Confidential Discovery Material" to an individual listed in
12 items (d)(i) through (iv) under paragraph 2 above shall be limited to the information, documents
13 and/or things that outside counsel believes are reasonably required for such individual to assist in
14 this litigation.

15 3. Information designated "CONFIDENTIAL--ATTORNEYS' EYES ONLY"
16 may only be used for purposes of this litigation, and may only be disclosed to persons falling
17 within the categories specified in Paragraphs 2(a), (b), (c), and (d)(ii)–(vi) of this Order, who are
18 not currently engaged and shall not engage during the course of this litigation and for a period of
19 two (2) years following final disposition of this litigation (whether by judgment including
20 exhaustion of all appeals, settlement, or otherwise) in the preparation or prosecution of patent
21 application(s) related to network interface hardware, including cards, adaptors, converters, circuit
22 boards, chips, motherboards, hubs, routers, switches, controllers, and associated software and
23 firmware used to operate the network interface hardware, including direct supervision or
24 assistance thereof, on behalf of 3Com Corporation, D-Link Systems, Inc., Via Technologies, Inc.,
25 Realtek Semiconductor Corporation, Marvell Semiconductor, Inc. or any of their corporate
26 parents, predecessors in interest, subsidiaries, joint ventures, affiliates, or any other entities
27 partially or wholly under their control or ownership, and only in accordance with the procedures
28 established under this Order. The prohibitions on patent prosecution activity stated above does not

1 preclude said persons from counseling a client regarding prosecution strategy involving a client's
2 patent portfolio, so long as the counsel provided by said persons is not based upon the information
3 designated either "CONFIDENTIAL" or "CONFIDENTIAL--ATTORNEYS' EYES ONLY."

4 4. Counsel shall exert their best efforts to identify materials or information
5 protected by the attorney-client privilege, the work product doctrine, and/or any other privilege,
6 before its disclosure. The inadvertent production (including through making the material available
7 for inspection under paragraph 1(g)(iv)) of any document or thing by any Producing Party shall be
8 without prejudice to any claim by the Producing Party that such material is protected by the
9 attorney-client privilege, or protected from discovery as work product. Provided that diligent
10 efforts are made to ensure that documents are carefully reviewed for privilege and that efforts to
11 retrieve inadvertently produced documents are commenced within a reasonable period of time
12 after discovery of their production, the Producing Party shall not be held to have waived any rights
13 thereunder merely by inadvertent production made subsequent to the execution of this Order. If
14 within a reasonable time after the discovery of the inadvertent production a Producing Party
15 asserts that such materials are protected by the attorney-client privilege, work product doctrine, or
16 any other claim of privilege, and were inadvertently produced, the Receiving Party shall take
17 immediate steps to ensure that all known copies of such material are returned promptly to the
18 Producing Party. The cost, if any, for excising such materials by the Receiving Party shall be
19 borne by the Producing Party. Any party may thereafter contest such claims of privilege or work
20 product as if the materials had not been produced, but shall not assert that a waiver occurred as a
21 result of the production if the Producing Party has complied with the provisions of this paragraph.

22 5. Prior to showing any Confidential Discovery Material of the Designating
23 Party to any of the individuals identified in paragraph 2(d)(ii) above, the party proposing the
24 disclosure shall serve on the Designating Party and on MSI: (i) a written notice identifying such
25 individual and stating such individual's present occupation, employer and position, and all other
26 business affiliations for the past 10 years, (ii) the most up-to-date copy of such individual's
27 curriculum vitae, and (iii) an Undertaking in the form attached hereto as Exhibit A executed by
28 such individual. The Designating Party and MSI shall have ten (10) calendar days to object to the

1 disclosure of its Confidential Discovery Material to such individual. If at the end of the 10-
2 calendar-day period no written objection has been received by the party that wishes to disclose the
3 information, then the individual may receive copies of such Confidential Discovery Material upon
4 compliance with all applicable provisions of this Protective Order. Such an objection, however,
5 shall stay disclosure to the proposed recipient. If the Designating Party or MSI and party
6 proposing disclosure are unable to resolve a disagreement, the party proposing to make the
7 disclosure may thereupon seek leave of the Court to make the disclosure, notwithstanding the
8 objection, in accordance with the assigned Judges' procedures for raising discovery disputes, in
9 particular section 1.5 of Judge Walker's Standing Order.

10 6. Any information designated as Confidential Discovery Material may not be
11 offered into evidence at trial or any other proceeding unless the Designating Party is given
12 reasonable notice and an opportunity to object and to seek a protective order. For the purposes of
13 trial, designation of information in the pre-trial order shall be considered sufficient notice to a
14 party with respect to the information referenced therein. For the purposes of motion practice, the
15 parties shall follow the procedures set forth in Civil L.R. 79-5(d) with respect to the filing of
16 another party's designated material and following that procedure shall be considered full
17 compliance with this paragraph.

18 7. Counsel shall exert their best efforts to identify Confidential Discovery
19 Material. The inadvertent designation, misdesignation, or non-designation of any document or
20 thing by any party or non-party shall be without prejudice to any claim the party or non-party has
21 to preserve the confidentiality of inadvertently disclosed information. Provided that efforts to
22 retrieve inadvertently designated documents are commenced within a reasonable period of time
23 after discovery of their production, no Producing Party shall be held to have waived any rights
24 thereunder by inadvertent disclosure. If within a reasonable time after discovery of the
25 inadvertent production a Producing Party asserts that such materials should be designated as
26 "CONFIDENTIAL" or "CONFIDENTIAL--ATTORNEYS' EYES ONLY," and were
27 inadvertently produced with a different designation, the Receiving Party shall take immediate
28 steps to ensure that all known copies of such material are appropriately disclosed according to the

1 provisions of this Order. The cost, if any, for redesignating such materials by the Receiving Party
2 shall be borne by the Producing Party.

3 8. This Protective Order shall not prevent any party from moving this Court
4 for an order de-designating or re-designating Confidential Discovery Materials. The information
5 shall remain Confidential Discovery Material and under the status given by the Designating Party
6 unless and until the Court rules to the contrary. It shall be the burden of the Designating Party to
7 prove that its designation is appropriate. Further, a Receiving Party is not obligated to challenge
8 the propriety of a designation as Confidential Discovery Material at the time of the designation,
9 but must make all such challenges not later than 60 days prior to the trial date in this action.

10 9. In the event of any accidental or inadvertent disclosure of Confidential
11 Discovery Material other than in a manner authorized by this Protective Order, counsel for any
12 party who knows or becomes aware of such disclosure shall immediately notify counsel for the
13 Designating Party of all of the pertinent facts, and make every effort to prevent further
14 unauthorized disclosure, including retrieving all copies of any Confidential Discovery Material a
15 party has improperly disclosed from the recipient(s) thereof and securing the agreement of the
16 recipients in writing not to further disseminate the Confidential Discovery Material in any form.

17 10. Each recipient of any Confidential Discovery Material produced in this
18 litigation hereby agrees to be subject to the jurisdiction of this Court for the purposes of the
19 implementation and enforcement of this Protective Order.

20 11. Confidential Discovery Material shall not be used or disclosed by any
21 recipient for any purpose other than in connection with the above-captioned action and shall not
22 be disclosed by the recipient to anyone other than those persons as designated in the appropriate
23 section of paragraphs 2 and 3 herein, unless and until the restrictions herein are removed by order
24 of the Court or by written stipulation of the parties and Designating Party, subject to the approval
25 of the Court.

26 12. Nothing herein shall bar or restrict any attorney from rendering advice to
27 his or her client regarding this litigation and, in the course thereof, relying upon his or her
28 examination of Confidential Discovery Material, provided, however, that in rendering such

1 advice and in otherwise communicating with his or her client, the attorney shall not disclose the
2 content of any Confidential Discovery Material to anyone not authorized to receive such
3 information in accordance with this Protective Order.

4 13. This Protective Order shall not be deemed a waiver of:

5 (a) any party's right to object to any discovery requests on any grounds;

6 (b) any party's right to seek an order compelling discovery with respect to any
7 discovery request;

8 (c) any party's right in any proceeding in this litigation to object to the
9 admission of any evidence on any ground;

10 (d) any party's right to use and disclose its own documents and its own
11 Confidential Discovery Material in its sole and complete discretion; or

12 (e) the status of any information as a trade secret or other confidential
13 information.

14 14. This Protective Order shall be valid throughout the course of this litigation
15 (defined to include all proceedings herein, appeals, and/or remands) and shall survive the
16 termination of this litigation. Within sixty (60) days of the final termination of this litigation, all
17 documents and copies of documents (including any copies created by optical scanning) produced
18 by the parties or by nonparties designated as containing Confidential Discovery Material shall be
19 returned to the Designating Party or destroyed. If destroyed or returned pursuant to this provision,
20 the person or persons who destroy and/or return such Confidential Discovery Material shall
21 provide written certification to the Designating Party within sixty (60) days of final
22 termination of this litigation that such information has been properly destroyed or returned.
23 The terms of this Protective Order shall survive and remain in full force after the termination
24 of this lawsuit and the Court shall have jurisdiction over the parties, their attorneys, and all
25 persons to whom Confidential Discovery Material has been disclosed for the purpose of
26 enforcing the terms of this Protective Order and/or redressing any violation thereof.

1 15. The terms of this Protective Order may be applied to the documents,
2 information and things received by a party from any person who is not a party to this litigation at
3 the election of such person.

4 16. Counsel for the parties to whom Confidential Discovery Material has been
5 furnished shall be responsible for restricting disclosure in accordance with the provisions of this
6 Protective Order and for securing execution of and retaining the Undertaking attached as Exhibit
7 A as and when required under the provisions of this Protective Order.

8 17. This Protective Order may be modified or amended either by agreement of
9 the parties or by further order of the Court upon good cause shown.

10 18. Mock Jurors: A party may show another party's Confidential Discovery
11 Material to mock jury members after providing to the party owning the Confidential Discovery
12 Material written assurance that it will use reasonable measures to screen the potential mock jurors
13 to exclude any individuals who are employed by, have a relationship with, have ownership of or
14 interests in, or are otherwise associated in any way with, any party and all predecessors, successor
15 and assigns thereof, or any other entity involved in research, design, testing, manufacture and/or
16 sale of networking equipment, network interface hardware, including cards, adaptors, converters,
17 circuit boards, chips, motherboards, hubs, routers, switches, controllers, and associated software
18 and firmware used to operate the network interface hardware. Additionally, prior to any
19 disclosure of another party's Confidential Discovery Material to mock jury members, each mock
20 jury member must provide in writing to counsel for the party retaining the jury member an
21 agreement to maintain as confidential all Confidential Discovery Material disclosed during the
22 mock jury exercise. All materials provided to mock jury members must be returned to counsel for
23 the party retaining the mock jury members after the conclusion of the mock jury exercise.

1
2 Dated: February 9, 2006

3 /s/ Henry B. Gutman
4 Henry B. Gutman (Admitted *pro hac vice*)
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11 Attorneys for Plaintiff/Counterdefendant
12 3COM CORPORATION

Dated: February 9, 2006

/s/ David M. Barkan
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Attorneys for Defendant
D-LINK SYSTEMS, INC.

13 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under
14 penalty of perjury that concurrence in the filing of this document has been obtained from David
15 M. Barkan.

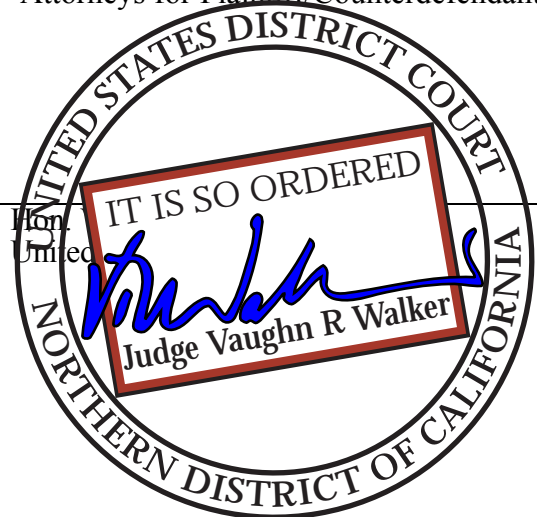
SIMPSON THACHER & BARTLETT LLP

By: /s/ Henry B. Gutman
Henry B. Gutman (admitted *pro hac vice*)

Attorneys for Plaintiff/Counterdefendant

16 **IT IS SO ORDERED:**

17
18 Dated: March 21, 2006



**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**UNDERTAKING AND DECLARATION PURSUANT
TO STIPULATED PROTECTIVE ORDER REGARDING
DISCLOSURE OF CONFIDENTIAL INFORMATION**

I, _____, hereby acknowledge that I am to be provided access to Confidential Discovery Material as defined in the Protective Order dated _____ in the above-captioned lawsuit.

My address is _____. My present employer is _____. My present occupation or job description is _____.

I certify my understanding that the Confidential Discovery Material is being provided to me pursuant to the terms and restrictions of the aforesaid Protective Order and that I have been given a copy of and have read and understood my obligations under that Protective Order. I hereby agree to be bound by the terms of the Protective Order. I understand that the Confidential Discovery Material and my copies or notes relating thereto may be disclosed to or discussed with only those persons permitted by the Protective Order to receive such information. I will return upon request all information containing Confidential Discovery Material, copies thereof and notes

1 that I have prepared relating thereto, to outside trial counsel for the party with whom I am
2 associated.

3 I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the
4 Protective Order and waive any and all objections to jurisdiction and venue.

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct.

7
8 SIGNED this ____ day of _____, 20__

9
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11 _____
12 (signature)

13 _____
14 (print name)
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